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tion of the liberty of the individual. It would seem, therefore, that the determination of the constitutionality of any law restricting the length of the working day may depend upon the judgment of five jurists on what is, in the last analysis, a medical question. For the restriction which will be permitted varies directly with the judicial appreciation of the evils inherent in labor beyond the prescribed limit.

In many other instances, of course, the courts pass upon medical questions, Trial judges and juries pass on questions of physiology, chemistry, engineering and similar technical subjects in which they have no expert training. But in these cases the testimony of technical experts is presented in evidence during the trial. In passing on questions of constitutionality, however, where similar technical questions are involved, the courts have seldom in the past had the benefit of expert testimony. *The Case for the Shorter Work Day* fills a need which has been sadly felt. Its authors have furnished an excellent model for future briefs on similar constitutional questions. In laying emphasis on the exact nature of the question which the Supreme Court has to decide, they have made a contribution to jurisprudence and to political science.

THOMAS REED POWELL.

Law and Order in Industry. By JULIUS HENRY COHEN. New York, The Macmillan Company, 1916.—xviii, 292 pp.

Mr. Cohen has written a history of the "protocol" in the New York ladies' cloak and suit industry. His position as counsel for the Cloak, Suit, and Skirt Manufacturers' Protective Association has afforded him an unusual opportunity to learn the inside workings of this organization, and to portray the motives and the trials of the "bosses." In brief but graphic chapters he describes the chaos in the needle trades of New York in the last decade, the gradual realization by the employers that a strong association was the only means of coping with the operatives' union which became suddenly unified and powerful in 1910, the attempts to settle the long strike that ensued, and the slow evolution of the protocol through the efforts of Louis Brandeis, Louis Marshall, Meyer London and himself. This agreement Mr. Cohen considers

> a fundamental constitution for the doing of business between the workers and the employers, with a supreme judicial tribunal, a conciliation and mediation department, a department for the establishment of legislation by consent of both parties, and an administrative department [page xii].

But the adoption of the protocol failed to bring complete freedom from disagreements, for it had to be amended several times in order that complaints might be more quickly and satisfactorily adjusted. The question of discharging union members was a continuous source of irritation. The arbitration board in January, 1915, rendered a decision requiring that "the power of administration, discipline and discharge, vested in the employer shall be exercised in a fair and reasonable manner, and if the propriety of the action is questioned, shall be subject to review." Although the terms of this decision were satisfactory to both parties, its interpretation was difficult. Later in the year a shop strike occurred while several discharge cases were awaiting arbitration; this strike was in violation of the protocol and in defiance of the union officers, who were at the time involved in legal difficulties. As a result the manufacturers who opposed the agreement gained the upper hand and the protocol was abrogated. However, the Mayor appointed a council of conciliation which engineered a renewal of the protocol for two years. The agreement was to continue indefinitely unless formally repudiated by either party two months before the expiration of a two-year period.

At this point Mr. Cohen has to leave the history of the protocol for a discussion of his main theme, the practicability of settling labor difficulties by voluntary collective agreement. He finds that the "preferential shop" is a workable substitute for the closed union shop and for the non-union shop, but points out the hardship to employers of union operatives in competition with employers who close their shops to these organizations.

> Employers generally already are aware of the value of collective bargaining to society generally. They accept it in theory and in principle. What they want to know is how to run business by it. We will get more collective agreements when we solve the problem of enforcement of standards. Those who from the outside believe in the social value of joint agreements between unions and employers' associations, must not rely upon violence or law breaking as the means of securing them. They must face the business factors squarely. When we do this we shall make progress, as we did in municipal reform [page 204].

One of the difficulties can be solved, Mr. Cohen believes, by the adoption of a white label to be placed on goods manufactured under protocol conditions. Thus the power of the consuming public could be used to coerce the non-conforming employer. Of course this is a good suggestion, provided only that the consumers can be interested.

A second aid to the collective agreement Mr. Cohen sees in the "Federal Industrial Council," a body with power to enforce on all employers and employees the terms voluntarily adopted by the majority of employers and of the employees in the same industry. It is difficult to reconcile such a body with our present constitutional system, yet the day may come when we will effectively provide by law for real democracy in industry.

The reader of Mr. Cohen's work cannot fail to be struck with his frankly lawyer-like attitude; indeed he claims for the profession an important if not paramount rôle in the creation of industrial peace through education (page 215). Can it be dreamed that the rising generation of lawyers will have a larger social conscience than their fathers? This we may hope, indeed expect, when we find lawyers taking such advanced ground as Mr. Cohen.

Again, one is impressed with the skill of the author's presentation. His story unfolds itself naturally and vividly, at times almost poetically, as in the sentence: "Human memory is a slate on which the chalk marks rub out all too easily; only those lessons engraved with hot and sharp needles of suffering remain."

At times one is suspicious that Mr. Cohen glosses over some important facts. In his praise of the principle of the "preferential shop," for instance, he fails to mention the experience in the dress and waist industry. In this branch, under a similar protocol, twenty-nine large establishments employing a total of 5000 operatives had upon their rolls fewer than fifty union members (Bull. Bur. Lab. Stat., no. 145, p. 9).

Finally, it is hard to accept Mr. Cohen's conclusion that the employers generally desire collective bargaining. Since the book was published the protocol has been repudiated by the Manufacturers' Association and the employees have been locked out. After a month, the operatives were invited to return to work "as individuals." But for nearly three months the Association refused to accept mediation. When other industries are considered, the conclusion is of even more doubtful validity.

Law and Order in Industry, then, is a book written from the experience of a lawyer who has been active in the development of the collective agreement. His knowledge of his subject and his ability to present it are beyond question. His viewpoint is fruitful of suggestion. But his reader must be wary of his conclusions and of the completeness of his exposition.

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